IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.855 OF 2005
IN
ARBITRATION PETITION NO.499 OF 2003

Maharashtra Small Scale Industries
Development Corporation Ltd. Appellant
vs.
Snehadeep Structures Pvt.Ltd. Respondent

Mr.Rafiq Dada, senior counsel with Mr.A.C.Mahimkar
i/b.Mahimkar & Co. for the appellant.

Mr.S.A.Divan, senior counsel i/b.Ms.Chandana
Salgaonkar-Rai for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 17th November 2005

P.C.

Heard Mr.Rafiq Dada, the learned senior counsel for the appellant and Mr.S.A.Divan, the learned senior counsel for the respondent.

2. On the one hand the learned senior counsel for the appellant submitted that The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, 'Act of 1993') was not attracted and the prerequisite condition to deposit 75% of the amount in terms of the award for maintaining the arbitration petition cannot be imposed; on the other hand, the learned senior counsel for the respondent would submit that the Act of 1993 was

attracted and the arbitration petition could not have been entertained without there being deposit of 75% of the amount in terms of the award and that Bank Guarantee was no substitute to the deposit as contemplated under Section 7 of the Act of 1993.

3. We find from the impugned order that the aspect whether the Act of 1993 was attracted or not was not considered by the learned Single Judge and the arbitration petition came to be dismissed on the ground of non-prosecution for not furnishing the Bank Guarantee within time for which a statement was made on behalf of the present appellant.

4. Having reflected over the matter, we are of the view that since the parties were at issue regarding the applicability of Section 7 of the Act of 1993, the learned Single Judge ought to have dealt with the said issue and dismissal of the arbitration petition on the ground that Bank Guarantee was not furnished by the petitioner within time as per the statement made before the Court was not justified. If the Act of 1993 is not attracted, the question of deposit would not arise.

5. Moreover we find from the affidavit dated 23.8.2005 filed on behalf of the appellant before the learned motion Judge that the statement was made that Bank

Guarantee shall be furnished by 24.8.2005, i.e., the next day. In that fact situation, obviously there was no question of the petitioner being not interested in prosecuting the arbitration petition.

6. We, accordingly, set aside the order dated 23.8.2005 and restore the arbitration petition no.499/2003 to file for fresh consideration in accordance with law.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)